IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1938 OF 2007

Shri Amit Sitaram Jadhav ...Petitioner

V/s.

Mrs.Ashwini Amit Jadhav ...Respondent

Mr.V.G. Mujumdar for Petitioner.
Mr.Sakhare i/b. M/s.YKS Legal for Respondent.

CORAM : V.M. KANADE, J.

DATED : 5th JULY, 2007.

P.C:-

1. Heard learned counsel for Petitioner and learned counsel for the Respondent.

2. The Petitioner takes exception to the order passed by the Civil Judge, Senior Division, Nashik, on application filed by the Petitioner for dismissing the Petition on the ground of non-maintainability. The Trial Court rejected the said Petition and therefore, being aggrieved by the said order, Petitioner has preferred this Writ Petition U/s.227 of Constitution of India.

3. It is submitted by the learned counsel for the Petitioner that the Petitioner initially had filed Petition against the Respondent U/s. 9 of the Hindu Marriage Act for restitution of conjugal rights and the Trial Court had granted decree in his favour in the said Petition. He submits that thereafter, the Respondent preferred the Petition U/s.10 of the Hindu Marriage Act, seeking order of judicial separation. He submits that second petition filed by the Respondent was not maintainable since it was barred by principle of res judicata as laid down U/s.11 of C.P.C. In support of this submission, he relied on the judgment of Allahabad High Court in the case of **Trilok Singh V. Savitri Devi reported in AIR 1972 ALLAHABAD 52**. He submits that the Trial Court has erred in coming to the conclusion that the cause of action and relief claimed are different, therefore Petition was not maintainable.

4. In my view, said submissions made by the learned counsel for the Petitioner, can not be accepted. It is well settled law that Petitions U/s.9 and 10 Hindu Marriage Act operate in different fields.

Whereas Petition U/s.9 is filed for the purpose of restitution of conjugal rights, Petition U/s.10 can be filed by her spouse for order of judicial separation. Therefore, it can not be stated that merely because the Petition for restitution of conjugal rights has been allowed the Respondent-wife is precluded as a result of this decree to seek order of judicial separation. U/s.10 of the Hindu Marriage Act, spouse can ask for judicial separation on the grounds mentioned in the said section. Therefore, even if decree for restitution of conjugal rights is passed in favour of spouse that can not be a bar for other spouse to ask for order of judicial separation on the basis of grounds which are mentioned in the said provisions.

5. Ratio of the judgment in the case of **Trilok Singh V. Savitri (supra)** will not apply to the facts of the present case. In the said case decree of divorce was sought by the Appellant and in the alternative for judicial separation. In the context of the said case, Allahabad High Court held that if issue between parties is the same even if the relief claimed in two different suits are different, even then

decree in one will operate as res judicata.

6. In any case, ratio of the said judgment will not apply to the present case. There is no merit in the submissions made by the learned counsel for Petitioner. The Petition is accordingly, dismissed.

7. The Trial Court is directed to decide the Petition for judicial separation as expeditiously as possible and in any case within one year.

V.M. KANADE, J.